IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1223 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA

HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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RANJITSINH ROOPSINH PATEL - Appellant

Versus

STATE OF GUJARAT - Opponent

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Appearance :
MS SADHANA SAGAR for Appellant.
MR KT DAVE, APP for Opponent.

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CORAM :	HONOURABLE MR.JUSTICE A.M.KAPADIA
	and
	HONOURABLE MR.JUSTICE K.A.PUJ

Date : 21/02/2007
ORAL JUDGMENT
(Per : HONOURABLE MR.JUSTICE K.A.PUJ)

1. Challenge in this Appeal filed under Section 374 of the Code of Criminal Procedure (“the Code” for short) is to the correctness of the judgment and order dated 31.08.1999 rendered in Sessions Case No.299 of 1998 by the learned Additional Sessions Judge, Ahmedabad by which the appellant – Ranjitsinh Roopsinh Patel (“the accused” for short) has been convicted for commission of the offence punishable under Section 306 & 498 (A) of the Indian Penal Code (“IPC” for short) and sentenced to suffer RI for 10 years and fine of Rs.10,000/- and in default thereof, SI for one year for the offence punishable under Section 306 of IPC and RI for 3 years and fine of Rs.5,000/- and in default thereof, SI for 3 months for the offence punishable under

Section 498 (A) of the IPC. Both the substantive sentences were ordered to run one after another, meaning thereby, the accused was ordered to undergo substantive sentence of 13 years.

2. Since the facts of the case have been detailed in the judgment of the learned Additional Sessions Judge, Ahmedabad, it is not necessary for us to repeat the same all over again in verbatim and in detail in this judgment. However, the basic facts which are necessary to be discussed in this appeal are as under:-

3. The deceased Madhuben was residing with her husband - Ranjitsinh Roopsinh Patel – the accused herein for the last about 2 years prior to the date of incident i.e. 05.03.1998. The accused was serving as Police Constable in Police headquarters at Ahmedabad City. The first wife of the accused expired and he had three issues through his first wife, two daughters and one son. The elder

daughter, namely, Varsha was aged about 16 years and younger daughter Suman was aged about 12 years. The son, namely, Mukesh was aged about 8 years. The deceased Madhuben also got married earlier with her first husband and since he was harassing her, she got divorce from her and with the intervention of the reputed persons from the community, she got married with the accused. The deceased Madhuben's father, namely, Vajesinh was residing at village Panchela, Tal. Devgadhbariya.

4. It is the case of the prosecution that the accused had developed illicit relations with his own daughter and he behaved improperly with her. Deceased Madhuben has prevented the accused on many occasions from behaving improperly with his own daughter and hence, the accused used to beat her. It is also the case of the prosecution that on 05.03.1998, at about 12.30 in the night, the accused had seriously beaten his wife i.e. Deceased Madhuben for the same reason and hence, she was

compelled to pour kerosene on her body and set herself ablaze. The accused had tried to save her and also shouted for help. He has thereafter admitted the deceased Madhuben to Civil Hospital where her dying declaration was recorded by the Executive Magistrate and ultimately she expired on 09.03.1998.

5. The investigation was put into motion and in pursuance thereof, the accused was charge-sheeted with offence punishable under Section 498 (A) and 306 of IPC. It was in pursuance of the said investigation of the offence that the charge-sheet was submitted in the Court of learned Metropolitan Magistrate, Court No. 2, Ahmedabad.

6. As the offence under Section 306 & 498 (A) of IPC is exclusively triable by the Court of Sessions, the learned Metropolitan Magistrate, Court No. 2, Ahmedabad committed the case to the City Civil & Sessions Court, Ahmedabad.

7. The learned Additional Sessions Judge, Ahmedabad to whom the case was made over for trial, framed charge against the accused for commission of the offence punishable under Section 306 & 498 (A) of IPC. The charge was read over and explained to the accused. As the accused pleaded not guilty to the charge, he was put to trial and tried by the learned Additional Sessions Judge, Ahmedabad in Sessions Case No. 299 of 1998.

8. In order to bring home the charge levelled against the accused, the prosecution has, in all, examined as many as 07 witnesses, the details of which have been given in paragraph 3 of the impugned judgment and order and the same are as under :-

Sr. No.	Exh. No.	Particulars	Page Nos.
01.	10	P.W. 1 – Kalpanaben Maganbhai Katara, Panch witness.	41-42
02.	11	P.W. 2 – Hasmukh K. Patel, Panch witness.	43-46

Sr. No.	Exh. No.	Particulars	Page Nos.
03.	14	P.W. 3 – Ranjitsinh Virsangbhai Gohil – Executive Magistrate.	47-56
04.	19	P.W. 4 – Dr. Sandip K. Patel, Medical Officer.	57-62
05.	21	P.W. 5 – Hasumatiben Ranchhodlal Patel, Medical Officer of P. M. Note.	63-66
06.	23	P.W. 6 – Bitaji Gobarji Bhagora, P.S.I.	67-68
07.	24	P.W. 7 – Jaynarayan Rameshwar Dayal Shrivastav, P.I. & I.O.	69-78

9. To prove the culpability of the accused, the prosecution has also produced number of documents and relied upon the contents of the same, details of which, enumerated in paragraph 4 of the impugned judgment and order, are as under :-

Sr. No.	Exh. No.	Type of Evidence	Page Nos.
01.	01	Charge	37-40
02.	09	Inquest Panchnama	171-174
03.	16	Dying Declaration recorded by Executive Magistrate.	179-182
04.	22	P. M. Report	207-222
05.	25	Complaint	223-226
06.	26	Report for registration of the offence.	227-230
07.	27	Panchnama of scene of offence	231-238
08.	28	Arrest Memo.	239-240
09.	29	Ravanagi Note.	241-244

Sr. No.	Exh. No.	Type of Evidence	Page Nos.
10.	30	Receipt issued by FSL for receipt of muddamal.	245-246
11.	31	FSL Report.	247-250

10. After recording of the evidence of the prosecution witnesses was over, the learned Additional Sessions Judge, Ahmedabad, explained to the accused the circumstances appearing against him in the evidence of the prosecution witnesses and recorded his further statement, as required under Section 313 of the Code. In his further statement, the accused denied the case of the prosecution in its entirety and submitted that he has been falsely implicated in the offence alleged against him. In his further statement given in writing on 24.07.1999, which is at page 95 of the paper book, the accused has stated that his wife Madhuben had driven out all his three children on 05.03.1998 and thereafter when he came to his house along with his three children, he saw one unknown person coming out of his house and immediately ran away. He also saw in his house the

bed as well as bed-sheet in improper condition and the hair of his wife i.e. Deceased Madhuben were also not in proper condition and hence, he scolded his wife and because of that, she poured kerosene on her and set her ablaze. However, he did not lead any evidence nor did he examine any witness in support of his defence.

11. On appreciation, evaluation, analysis and scrutiny of the evidence, the learned Additional Sessions Judge, Ahmedabad came to the conclusion that the accused has committed an offence punishable under Section 306 & 498 (A) of IPC. On the basis of the said finding, the learned Additional Sessions Judge, Ahmedabad has convicted the accused and sentenced to suffer RI for 10 years and fine of Rs.10,000/- and in default thereof, SI for one year for the offence punishable under Section 306 of IPC and RI for 3 years and fine of Rs.5,000/- and in default thereof, SI for 3 months for the offence punishable under Section 498 (A) of the IPC, which has given rise to the instant appeal at the instance of the

accused.

12. Ms. Sadhna Sagar, learned advocate appearing for the accused has taken us through the oral as well as documentary evidence which are on record and also assailed the judgment and order of the learned Additional Sessions Judge, Ahmedabad. She has further submitted that the learned Additional Sessions Judge, Ahmedabad has erred in convicting the accused though there was no cogent or adequate evidence showing his guilt in the matter. She has further submitted that the learned Additional Sessions Judge, Ahmedabad has failed to appreciate that the accused is innocent and has not committed the alleged offence. She has further submitted that the evidence pressed into service by the prosecution is untrustworthy, unreliable and can never form basis of conviction.

13. She has further submitted that the learned Additional Sessions Judge, Ahmedabad has erred in not appreciating the fact that there were striking

contradictions between the dying declaration and other narrated evidence in as much as the medical evidence does not support the version of the dying declaration which forms the sole basis of conviction and sentence. She has further submitted that the learned Additional Sessions Judge has not correctly appreciated the evidence of the complainant. When her dying declaration was recorded, she was not in the fit state of mind and the incident was not narrated by her as if it was her cross-examination. She has further submitted that the accused has himself tried to save the deceased and she was taken by the accused himself to the Civil Hospital for her treatment. The prosecution has totally failed to examine important witness, namely, the daughter of the accused, namely, Varsha. She is the only witness to give true facts of the whole case. But this important witness was not examined by the prosecution and it was a fatal blow to the prosecution case. She has further submitted that not a single witness of neighbourhood was examined by the prosecution. The statements of the neighbours

though recorded and though they were cited as witnesses in the charge-sheet, they were dropped by the prosecution for the reasons best known to it. No independent witness is available and the whole prosecution case was based on the evidence of the Doctors, Investigating Officer and Executive Magistrate. She has further submitted that the medical report does not indicate that the alleged offence was committed by the accused. Even FSL Report does not support the case of the prosecution. In view of the fact that the prosecution has failed to prove the case against the accused, Ms. Sadhna Sagar has strongly urged that no other finding except acquittal of the accused from the charges levelled against him would meet the ends of justice.

14. Mr. K.T. Dave, learned Additional Public Prosecutor, on the other hand, has supported the order and judgment of the learned Additional Sessions Judge, Ahmedabad and submitted that the prosecution has established the charge levelled against the accused beyond any reasonable doubt. The documentary

evidence on the record of the proceedings clearly establish the involvement, presence and role of the accused for the offences charged against him. He has further submitted that the dying declaration of the deceased Madhuben makes it very clear that the accused was quarreling with her on many occasions and he used to beat her and because of his illicit relation with his own daughter, she had to take this extreme step of burning herself. He has further submitted that the evidence of Executive Magistrate as well as the Investigating Officer also supports the case of the prosecution. Looking to the evidence collected by the prosecution, it cannot be said that the accused is innocent and that the charge levelled against him has not been proved by the prosecution. He has, therefore, submitted that the order of conviction and sentence passed by the learned Additional Sessions Judge, Ahmedabad is not required to be interfered with.

15. We have considered the submissions advanced by the learned advocates appearing for the parties at

length and perused the impugned judgment and order. This Court has undertaken a complete and comprehensive appreciation of all vital features of the case and the entire evidence on record with reference to broad and reasonable probabilities of the case. We have also gone through the entire testimonial collections. We have applied our mind to the judgment and order passed by the learned Additional Sessions Judge, Ahmedabad convicting the accused and sentencing him to suffer RI for 10 years and fine of Rs.10,000/- and in default thereof, SI for one year for the offence punishable under Section 306 of IPC and RI for 3 years and fine of Rs.5,000/- and in default thereof, SI for 3 months for the offence punishable under Section 498 (A) of the IPC.

16. In order to find out whether the prosecution has established the charge against the accused beyond reasonable doubt and whether the learned Additional Sessions Judge, Ahmedabad has recorded a just and correct conclusion holding the accused

guilty, we may first advert to the oral testimony of the prosecution witnesses.

17. The entire case of the prosecution is based on the complaint – Exh. 25 of deceased Madhuben, which is treated as dying declaration recorded by P.W. 7 – Jaynarayan Rameshwar Dayal, his deposition at Exh. 24, Deposition of P.W. 3 – Ranjitsinh Virsangbhai Gohil at Exh. 14, dying declaration recorded by him in the hospital at Exh. 16 and the history recorded by the ward Doctor of the hospital at the time when the deceased was admitted in the hospital for the first time for her treatment.

18. In her first dying declaration at Exh. 16 recorded by the Executive Magistrate on 06.03.1998, the deceased Madhuben has stated that her husband used to quarrel with her. He takes drink. He looks with ill intention towards the elder daughter of his first wife. He sleeps with her and when deceased Madhuben prevents him, he threatens to kill her. He is behaving in this manner for the last 3-4 months.

Hence, having fed up with this, she poured kerosene on her and set her ablaze.

19. P.W. 3 – Ranjitsinh Virsangbhai Gohil in his deposition at Exh. 14 has deposed that he has asked deceased Madhuben 12 questions and her answers were recorded by his own handwriting. He thereafter read the said declaration before her and she put her right leg thumb impression on the said declaration. He has further testified that he has obtained medical opinion that the deceased Madhuben was conscious. He has further stated that the declaration was made in his presence and he has signed it. He has produced the original declaration before the Court at Exh. 16.

20. P.W. 4 – Dr. Sandip K. Patel is examined at Exh. 18. He testified that deceased Madhuben has stated before him that because of the harassment of her husband, she poured kerosene on her and set her ablaze.

21. P.W. 7 – Jaynarayan Rameshwar Dayal Shrivastav is examined at Exh. 24. He is the Investigating Officer. He has registered complaint which is produced at Exh. 25. He testified that deceased Madhuben stated before him that her husband was harassing her and hence, she poured kerosene on her and set her ablaze. He recorded the complaint as per her say. He has further deposed that deceased Madhuben stated in her complaint that accused looked at her elder daughter with evil eye. She scolded him and hence, he quarreled with her.

22. In view of the aforesaid evidence, according to this Court, the sole testimony of the deceased Madhuben herself in the form of dying declaration is sufficient to establish the charge against the accused. However, her dying declaration is corroborated by the evidence of the Executive Magistrate, Medical Officer and Investigating Officer. The documentary evidence in the form of dying declaration, FSL Report and Medical Report leaves no doubt that the prosecution has established the charge levelled

against the accused for commission of an offence punishable under Section 306 & 498 (A) of IPC. Therefore, it is not necessary for us to discuss the evidence of other witnesses examined by the prosecution.

23. On close scrutiny of the evidence on record, we find no infirmity in the findings, ultimate conclusion and the resultant order of conviction and sentence recorded by the learned Additional Sessions Judge, Ahmedabad. It is true that during the course of investigation, statement of Varsha and Suman, daughters of the accused were recorded and statements of other witnesses were also recorded. They were cited as witnesses in the charge-sheet. However, they have been dropped subsequently possibly on presumption that they might turn hostile. This fact alone would not adversely affect the case of the prosecution as an opportunity was given to the accused and defence counsel could have made a request to the learned Additional Sessions Judge, Ahmedabad for examining them as their own

witnesses. However, no such opportunity was availed by the defence. We, therefore, do not find any infirmity in the order and judgment passed by the learned Additional Sessions Judge, Ahmedabad except to the fact that the order passed by the learned Additional Sessions Judge, Ahmedabad with regard to the sentence to be undergone by the accused one after another is very harsh, disproportionate, unjust and improper looking to the facts and circumstances of the case. We, therefore, alter this order and hold that the substantive sentence awarded by the learned Additional Sessions Judge, Ahmedabad for the offences punishable under Section 498 (A) and 306 of IPC are ordered to run concurrently.

24. In the aforesaid view of the matter, according to us, there is no valid reason or justifiable ground to interfere with the impugned judgment and order of conviction and sentence except the one which was indicated herein above passed by the learned Additional Sessions Judge, Ahmedabad. The jail

sheet produced before us clearly indicates that by considering the sentence of 13 years, the probable date of release of the accused is 05.09.2007. Since he is now ordered to be released after undergoing both the substantive sentences concurrently, he is deemed to have undergone the substantive sentence of about 10 years with usual set off as well as remissions. In the peculiar facts of the case, we are of the view that the custodial sentence undergone by the accused would meet with the ends of justice. We, therefore, direct the respondent – State of Gujarat and the Jail Authorities to release the accused forthwith, if his presence is not required in any other case.

25. For the foregoing reasons and subject to the aforesaid reduction in sentence, the appeal is accordingly partly allowed.

[A. M. KAPADIA, J.]

[K. A. PUJ, J.]

Savariya